IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7050 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KHUSAL PUNJAJI SOLANKI

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

Mr. A.J. Desai, A.G.P for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 29/02/2000

ORAL JUDGEMENT

Leave granted to the petitioner to tender on record the communication dated 27-10-1999 addressed by the detaining authority to the detenu with accompaniments.

Heard learned Advocate Mr. H.R. Prajapati for the petitioner and learned A.G.P. Mr. A.J. Desai for the respondents nos.1, 2 and 3.

1. The detention order dated 4-8-1999 passed by the respondent no.2-Commissioner of Police, Ahmedabad in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 ("PASA" for short) is challenged in the present proceedings under Article 226 of the Constitution of India.

2. The grounds of detention served and supplied to the detenu, copy of which is produced on record at Annexure "B" inter alia indicate that the petitioner is alleged to have been involved in four prohibition cases registered at Meghaninagar and Naroda Police Stations between the period 21-4-1999 and 2-8-1999. That all the cases pertain to offences made punishable under the Bombay Prohibition Act and countrymade liquor is seized. The cases are pending for further investigation.

3. The grounds of detention further indicate that two witnesses on assurance of their anonymity have given statements dated 3-8-1999 regarding the bootlegging activities of the petitioner and have narrated the incidents alleged to have occurred on 15-7-1999 and 10-7-1999 respectively.

4. That in consideration of the aforesaid material, the respondent no.2 as detaining authority has come to the conclusion that the petitioner is a "bootlegger" within the meaning of Section 2(b) of "PASA". That resort to general provisions of law being insufficient to prevent the petitioner from continuing his bootlegging activity, the detention order under "PASA" is necessary, and hence, the impugned order is passed.

5. The petitioner has challenged the impugned order on numerous grounds. It has been contended at the Bar on behalf of the petitioner that vide representation dated 13-9-1999, the petitioner-detenu had claimed documents including a document of FSL report in respect to prohibition cases registered against the petitioner. It is submitted on behalf of the petitioner that despite the receipt of the said representation, the respondent no.2 has not communicated the same and has supplied the certified copy of the FSL report, however, the delay in supplying the same from 13-9-1999 to 27-10-1999 has not been explained. It is also submitted that the documents

accompanied with the communication are dated 28-6-1999 which suggests that when the representation was received, the certified copy of the document of FSL report was in the custody of the investigating officer. That on account of the delay in supplying the document, the petitioner is deprived of his valuable right to make effective representation guaranteed under Article 22(5) of the Constitution which has rendered the continued detention of the petitioner-detenu invalid.

6. It is pertinent to note that despite due service of rule, none of the respondents appears to have filed affidavit to controvert the averments made in the petition. In view of the said fact, there is no explanation on record as to the delay in supply of the document claimed vide representation dated 13-3-1999. The documents on record clearly suggest that certified copy of the FSL report was ready on 28-6-1999, however, the same appears to have been communicated to the detenu on 27-10-1999. In the absence of any satisfactory explanation for the delay which has occasioned, it is required to be held that the valuable right of the petitioner-detenu to make effective representation has been affected and the constitutional mandate under Article 22(5) has been violated. Consequently, the continued detention of the detenu being illegal, the impugned order is required to be quashed and set aside.

7. As the petition succeeds on the aforesaid grounds, it is not necessary to consider and decide the other grounds raised in the petition.

8. On the basis of the foregoing discussion, the petition is allowed. The detention order dated 4-8-1999 passed by the respondent no.2-Commissioner of Police, Ahmedabad against the petitioner is hereby quashed and set aside. The petitioner-detenu-Khusal Punjaji Solanki Marwadi is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

(A.K.Trivedi,J.)

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